

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA No. S-2863-SB of 2012 (O&M)
DECIDED ON: APRIL 29, 2015**

BALDEV SINGH & OTHERS

.....APPELLANTS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporter of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate
for the appellants.

Mr. RPS Sidhu, AAG, Punjab.

JASPAL SINGH, J

Instant appeal has been preferred by Baldev Singh and others challenging their conviction and order of sentence awarded to them vide judgment of conviction dated September 21, 2012 whereby they have been convicted for commission of offence punishable under Sections 148, 353, 427 IPC as well as Section 3(2) and 4 of Prevention of Damage to Public Property Act (for short 'Act') and have been ordered to sentence rigorous imprisonment for a period of three years vide impugned order of sentence dated September 22, 2012.

2. At the very outset learned Senior counsel for the appellants has

submitted that appellants do not challenge their conviction awarded to them by learned trial Court vide impugned judgment of conviction dated September 21, 2012. However, in the facts and circumstances of the case a lenient view be taken in the matter of sentence and they be granted the concession of Probation of Offenders Act, 1958 (for short "Act of 1958).

3. Since, appellants have been convicted and sentenced under Section 3 (2) and 4 of the Act, which prescribes a minimum punishment for six months and one year respectively, the question which arises for determination is whether despite the fact that a minimum sentence of imprisonment has been provided under the provisions of aforesaid Act, court can resort to the provisions of Act of 1958, the answer to this question is in affirmative, in view of pronouncement of full Bench of this Court delivered in case captioned as **Joginder Singh v. State of Punjab; 1980 (CriLJ) 1218;** in which it was categorically observed that in an appropriate case, it is, open to the Court to take resort to the provisions of Section 4 of Act of 1958 and keep in abeyance the imposition of punishment, which is minimum required to be imposed for the commission of an offence.

4. Adverting to the facts of the case in hand, occurrence in this case relates back to the year 2010 when mob attracted at Bus Stand, Moga and set at ablaze the buses. Though, FIR was registered for the alleged commission of offence under Section 307 IPC as well as Section 25 of Arms Act but those offences could not be proved or established by the prosecution and appellants were acquitted of the charge. They were convicted and sentenced under Sections 148, 353 and 427 IPC as well as Section 3(2) and 4 of the Act only.

5. Some of the accused have already been acquitted and taken away by nature during pendency of trial. Now 34 appellants are facing trial who have preferred instant appeal. Appellants are facing pains and strains of protracted trial since the registration of instant case against them. The State can also be indemnified for the loss and damage caused to it, especially in the circumstances that occurrence has taken place on the spur of moment. Accordingly, this Court finds sufficient reasons to modify the sentence imposed upon appellants. Though, conviction of appellant is maintained and appeal in this regard is dismissed. However, sentence awarded to them is modified and they are ordered to be released on probation on furnishing of requisite bonds each to the satisfaction of learned trial Court with one surety each of the like amount for a period of three years to keep good conduct and behaviour and to receive sentence as and when called upon to do so by the Court. The amount of fine already paid/deposited by the appellants shall stand converted to the costs of litigation. In addition to it, appellants are further directed to pay a sum of ₹25,000/- each as compensation which shall be deposited by them in trial Court within a period of one month from the date of receipt of certified copy of this order. However, it is made clear that if any of appellants failed to comply with the above-said order within prescribed period, appeal preferred by defaulter would stand dismissed.

APRIL 29, 2015
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(JASPAL SINGH)
JUDGE